IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 40 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHREYAS GEARS PVT. LTD.

Versus

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Appearance:

1. COMPANY PETITION No. 40 of 2003

MR NAVIN K PAHWA for Petitioner No. 1

..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 05/09/2003

CAV JUDGEMENT

1. Heard ld. counsel Mr. Navin K.Pahwa for the petitioner and Ms. Davawala, ld. Addl.Central Govt. Standing Counsel for the Central Government.

2. This petition is filed by Shreyas Gears Pvt. Ltd., the Transferor Company for sanction of a SCheme of Amalgamation of petitioner Company with P.P.S. Trading Commpany Pvt. Ltd. (Transferee Company) under the provisions of Section 391 read with Section 394 of the Companies Act, 1956 (hereinafter referred to as the Act).

3. Both the transferee and transferor companies belong to the same management group and in fact the transferor company is a wholly owned subsidiary of the transferee company. The amalgamation of these two companies will channelize synergies and will lead to optimum utilization of available sources and will result in economies of scale. Upon amalgamation, the company would be in a better position to generate surplus funds, which in turn will enable the further growth in the business of the company. The petition gives details of the advantages that would flow by virtue of the amalgamation of this Company.

4. This being a closely held company, the Scheme of Amalgamation has been approved by all the shareholders/ unsecured creditors and the consent letters were filed along with Company Application No.40/2003 wherein the petitioner had prayed for dispensing with holding of the meeting of the shareholders. This Court, by an order dated 7.2.2003, allowed the Company Application and dispensed with the holding of the meetings of the shareholders/ unsecured creditors.

5. After the petition was admitted, it was duly advertised in English Local Daily "Indian Express" and Gujarati Local Daily "Jansatta" on 22.2.2003. However, the publication in Govt. Gazette was dispensed with. No one has come forward with any objection to the Scheme of Amalgamation.

6. Notices of the petition were served upon the Central Government and Ms. P.J.Davawala, ld. Addl. Standing Counsel who appeared and placed on record on 19.8.2003 a letter dated 4.8.2003 by the office of the Registrar of Companies, Ahmedabad along with the copy of the letter dated 29.7.2003 written by the Regional Director, Western Region to the Registrar of Companies in connection with this matter. Through the aforesaid letter, the Regional Director, Western Region had requested the Registrar of Companies, Ahmedabad to bring to the notice of this Court, the following facts:-

(a) That as per Clause 10 of the Scheme, the proposed

exchange ratio of share is 10 equity shares of Rs.10/ each of the Transferee Company for every 1 equity share of Rs.100/ held in Transferor Company. However, as per the valuation report dated 26.02.2003 furnished by M/s Sunil Poddar & Company, Chartered Accountants of the Company, the exchange ration suggested is 5 equity shares of Rs.10/ each in the Transferee Company for every 1 equity share of Rs.100/ each held in Transferor Company. The exchange ratio suggested in Clause 10 of the Scheme is in variance with the valuation report obtained by the Company from the Chartered Accountant and as such the exchange ratio in the Scheme has to be modified to be in agreement with the valuation report.

(b) That the Scheme does not provide for cancellation of inter-se holdings of shares held by the Transferor and Transferee Companies.

(c) That the petition filed by the Transferor Company does not contain a payer for dissolution of the Transferor Company.

8. In response to the aforesaid report of the Regional Director, Western Region, Mr. Pahwa, ld.counsel appearing for the petitioner company also tendered the affidavit on 19.8.2003 dealing with the above-referred three points raised by the Regional Director, Western Region. On perusal of the affidavit filed on behalf of the petitioner, it appears that so far as the first two points as raised by the Reginal Director are concerned, the petitioner company has also requested this Court to accept the said points and has requested to modify the Scheme of Amalgamation accordingly. However, qua point no.3 which pertains to prayer for dissolution of Transferor Company, it is stated in the affidavit that the Scheme of Amalgamation already provides for dissolution of the Transferor Company. Clause 16 of the Scheme of Amalgamation which provides for dissolution of the Transferor Company reads as under:-

"16. Dissolution of the Transferor Company:
Upon the Scheme being sanctioned and an order being made by the Court under Section 394 of the Act, the Transferor Company shall stand dissolved without winding up on the effective date."

Smt. P.J.Davawala, ld. Addl. Central Govt. Standing Counsel has no objection if the affidavit tendered by the petitioner company is accepted and the Scheme is modified to the extent of point No.1 7 2 as above.

9. Notice of the petition of the Transferor Company is also served upon the Official Liquidator as required under the provisions of Section 394(1) of the Act and the Official Liquidator has filed his report dated 25.07.2003 stating that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of public.

10. Having gone through the petition and having gone through the affidavit and having heard the ld. counsel appearing for the parties, this Court is satisfied that the Scheme of Amalgamation is in the interest of the Company and its members. At the same time, while accepting the affidavit filed on behalf of the company, this Court orders modification of the Scheme of Amalgamation (Annex.C) to the extent as indicated in para-8 above. In the circumstances, the Scheme of Amalgamation, as modified, is hereby sanctioned.

11. So far as the costs to be paid to the Central Govt. Standing Counsel is concerned, the same is quantified at Rs.3,500/ and the same be paid to Ms. P.J.Davawala, ld. Addl. Central Govt. Standing Counsel for the Central Govt.

This petition accordingly stands disposed.

[C.K. BUCH, J]

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